ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT N.D. OF N.Y. FILED AT ___ O'CLOCK Lawrence K. Baerman, Clerk, Syracuse

NIAGARA MOHAWK POWER CORPORATION
300 Erie Boulevard West
Syracuse, New York 13202

Plaintiff,

v.

CONSOLIDATED RAIL CORPORATION
Two Commerce Square
2001 Market Street, 17th Floor
Philadelphia, Pennsylvania 19101

THE FOUNDATION COMPANY
3660 Midland Avenue, Fourth Floor
Scarborough, Ontario
Canada M1V-4V3

THE KING SERVICE INC.
Foot of Main Street
Troy, New York 12180

PITTSBURGH BUSINESS PROPERTIES, INC.
720 One Oliver Plaza
Pittsburgh, Pennsylvania 15222

UNITED STATES STEEL COMPANY
600 Grant Street
Room 2447
Pittsburgh, Pennsylvania 15219

Defendants.

Case No. 98-CV-1039

JUDGE McAVOY

MAGISTRATE JUDGE DiBIANCO

COMPLAINT

Plaintiff Niagara Mohawk Power Corporation ("Niagara Mohawk" or "Plaintiff") alleges the following:

NATURE OF THE ACTION

1. This is a civil action for recovery of costs brought pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-75 (1994), ("CERCLA"), the law of the State of New York and common law. Plaintiff seeks to recover costs that it has incurred, and will incur, in response to the release or threatened release of hazardous substances and petroleum from the Troy (Water Street) Site in Troy, New York ("Site"). Plaintiff also seeks a judgment declaring each defendant's liability for future response costs regarding the Site, pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 9613(g)(2), and Section 3001 of the New York Civil Practice Law and Rules, N.Y.C.P.L.R. § 3001.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal law claims pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1331, and has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 28 U.S.C. §§ 2201, 42 U.S.C. § 9613(g)(2) and Section 3001 of the New York Civil Practice Law and Rules, N.Y.C.P.L.R. § 3001.

4. Venue is proper in the Northern District of New York pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) because releases of hazardous substances have occurred in this District.

5. A copy of this Complaint has been provided to the Attorney General of the United States and to the Administrator of the United States Environmental Protection Agency in accordance with Section 113(l) of CERCLA, 42 U.S.C. § 9613(l).

DESCRIPTION OF THE SITE

6. The Site is located in and around Troy, New York, and consists of four parcels of property.

7. The first Site parcel ("Area 1") is approximately 111 acres in size and is known as Breaker Island. Area 1 is located along the western shore of the Hudson River and is bordered on the south by the Village of Menands and on the west by Interstate Highway 787.

8. The second Site parcel ("Area 2") is approximately 33 acres in size. Area 2 is located along the eastern shore of the Hudson River, and is bordered on the west by approximately 1,200 shoreline feet of the Hudson River, on the east by railroad tracks owned by Consolidated Rail Corporation ("Conrail"), on the south by property owned by Chevron Asphalt Company, and on the north by industrial facilities. The Wynants Kill runs at the northern boundary of Area 2 in a westerly direction.

9. The third Site parcel ("Area 3") is approximately 11 acres in size and is located to the south of Area 2 under the Troy-Menands Bridge and extends south along the shoreline of the Hudson River. Area 3 is bordered on the west by the Hudson River and on the east by railroad tracks owned by Conrail.

10. The fourth Site parcel ("Area 4") is approximately 9 acres in size and is located south of Area 3. Area 4 is bordered on the west by the Hudson River and on the east by railroad tracks owned by Conrail.

THE PARTIES

11. Plaintiff Niagara Mohawk is organized and incorporated under the laws of the State of New York, and its principal place of business is located in Syracuse, New York. Niagara Mohawk provides electrical and gas utility service to a significant portion of upstate New York.

12. Defendant Consolidated Rail Corporation ("Conrail") is organized and incorporated under the laws of the State of Delaware. On information and belief, Conrail currently owns the railroad tracks and property adjoining the railroad tracks on Areas 2, 3 and 4.

13. Defendant The Foundation Company is organized and incorporated under the laws of the State of New York. On information and belief, The Foundation Company previously owned and operated a by-products plant on Area 2, and owned other land within the Site including Area 4.

14. Defendant The King Service Inc. is organized and incorporated under the laws of the State of New York. On information and belief, The King Service Inc. is the current owner of Area 2 and an operator of a petroleum storage and distribution facility on Area 2.

15. Defendant Pittsburgh Business Properties, Inc. is organized and incorporated under the laws of the State of Pennsylvania. On information and belief, Pittsburgh Business Properties, Inc. is the corporate successor to, or is otherwise responsible for the liabilities of,

Oliver & Snyder Steel Company, which owned and operated an industrial plant on Area 2 and owned other land within the Site including Area 4.

16. Defendant United States Steel Corporation is organized and incorporated under the laws of the State of Delaware. On information and belief, United States Steel Corporation owned Areas 1, 2 and 4, and is the corporate successor to, or is otherwise responsible for the liabilities of, Troy Steel Products Company and American Steel and Wire Company, which owned and/or operated Areas 1, 2 and 4.

ALLEGATIONS OF FACT

Background of Enforcement Actions and Niagara Mohawk's Responses

17. In December, 1992, Niagara Mohawk signed an Order on Consent with the New York State Department of Environmental Conservation ("NYSDEC"). Pursuant to the Order on Consent, Niagara Mohawk is required to investigate the nature and extent of hazardous substances present at the Site, to develop and evaluate alternatives for remedial actions, and to implement remedial actions to control and/or remove certain wastes at the Site as directed by NYSDEC.

18. Pursuant to the Order on Consent, from July 1994 to date, Niagara Mohawk conducted Preliminary Site Assessment/Interim Remedial Measure studies for Areas 1, 2 and 4. The studies were conducted to gather data to enable the NYSDEC to characterize hazardous substances that are or may be present at the Site, to enable the NYSDEC to determine whether such hazardous substances constitute a significant threat to public health or the environment necessitating remediation, and to enable Niagara Mohawk to develop appropriate Interim Remedial Measures.

19. Pursuant to the Order on Consent, from November 1995 to March 1996, Niagara Mohawk prepared work plans for Interim Remedial Measures for Area 2 and for a Remedial Investigation and Feasibility Study for Areas 2 and 4.

20. In March 1996, NYSDEC placed Area 4 of the Site on the New York Registry of Inactive Hazardous Waste Disposal Sites.

21. To date, Plaintiff has incurred costs in excess of $1 million in performing the activities required by the Order on Consent.

Involvement of Defendants With the Site

22. Troy Steel Products Company purchased land within the Site, including land within Areas 1, 2 and 4 of the Site in 1902, the same year in which Troy Steel Products Company was acquired by United States Steel Corporation. Areas 1 and 2 contained the Breaker Island and Bessemer Works, respectively, which were blast furnaces used in the manufacture of iron and steel. On information and belief, Areas 1, 2 and 4 were operated for United States Steel Corporation by Troy Steel Products Company and/or American Steel and Wire Company until the sale of these areas to Burden Iron Company in 1918.

23. On information and belief, hazardous substances, including slag from blast furnace operations, were disposed on Areas 1, 2 and 4 during the time that Troy Steel Products Company, American Steel and Wire Company, and United States Steel Company owned and/or operated these areas of the Site.

24. In 1924, Burden Iron Company, Oliver & Snyder Steel Company, The Foundation Company, and E. Arthur Tutein Inc. jointly formed the Troy Coke and Iron Corporation ("TCIC"). TCIC was formed to construct facilities on Area 2 for the manufacture of gas and the

recovery of useful by-products resulting therefrom. Those facilities are referred to herein as the "plant."

25. The ownership shares of TCIC were Burden Iron Company (46.25%), Oliver & Snyder Steel Company (21.5%), the Foundation Company (21.5%), and E. Arthur Tutein Inc. (10.75%).

26. In 1924, TCIC changed its name to the Hudson Valley Coke and Products Corporation ("HVCP").

27. In July 1924, the Burden Iron Company conveyed land to HVCP, including approximately 32 acres of Area 2 south of the Wynants Kill upon which HVCP constructed the plant, and Area 4.

28. The plant consisted of 55 ovens, a water gas plant and a producer gas plant. The plant supplied gas to Albany, Troy and nearby areas, and produced saleable by-products such as coke, pig iron, coal tar, sulphate of ammonia, benzol, and phenol. Tar-based products, including creosote pitch and road tars, were also produced. In 1929, a tar distillation plant was installed at the south end of Area 2 to produce creosote oils and hard pitch.

29. The plant was managed by a Board of Directors which represented Burden Iron Company, Oliver & Snyder Steel Company, The Foundation Company, E. Arthur Tutein Inc., Otis & Co., and White, Weld & Co.

30. On information and belief, during the period in which Oliver & Snyder Steel Company was an owner and operator of the plant, it was controlled by Oliver Iron & Steel Corporation, a closely-held corporation, and Oliver Iron & Steel Corporation's majority shareholders. On information and belief, as a result of a merger and name change, Pittsburgh

Business Properties, Inc. is the corporate successor to the liabilities of Oliver Iron & Steel Corporation.

31. On information and belief, during the time when HVCP owned and operated the plant, HVCP disposed of hazardous substances, including coal tar, slag, and purifier box waste on Area 2.

32. Hudson Valley Fuel Corporation, a Niagara Mohawk predecessor, owned portions of Areas 2 and 4 beginning in approximately 1929. On information and belief, Niagara Mohawk and its predecessors sold Area 2 to Republic Steel Corporation in a series of transactions in 1940, 1951 and 1957, and sold Area 4 to Republic Steel Corporation in 1951. On information and belief, at the time of the sales to Republic Steel Corporation, the buildings on Area 2 were in suitable condition for continued use as a manufacturing facility.

33. On information and belief, Republic Steel Corporation operated the facilities on Area 2.

34. On information and belief, Republic Steel disposed of hazardous substances from the manufacture of iron and steel, coke and gas, including tar residuals, slag and purifer box wastes, on Areas 2 and 4.

35. Republic Steel sold Area 2 to The King Service Inc. in a series of transactions in 1968 and 1973.

36. Currently, Area 2 is owned and operated by The King Service Inc., a fuel oil and gasoline distributor. Area 2 is occupied by The King Service Inc. and its lessees.

37. On information and belief, The King Service Inc. disposed of hazardous substances (including manufactured gas plant ("MGP") wastes), petroleum, and petroleum

contaminated with hazardous substances on Area 2. On information and belief, The King Service Inc. has caused spills of fuel oil, kerosene, and gasoline on Area 2.

38. On information and belief, The King Service Inc. cut holes in a large metal holder vessel on Area 2 that had been used by the plant for storage of gas. On information and belief, the King Service Inc. purchased this holder from Republic Steel in an intact condition. The King Service Inc.'s actions caused the release into the environment of hazardous substances.

39. On information and belief, persons employed by The King Service Inc. moved soil contaminated with purifier box waste, a hazardous substance, and spread it in an area constituting the flood plain of Wynants Kill, thereby releasing it into the environment.

40. On information and belief, after its purchase of Area 2 from Republic Steel, The King Service Inc. allowed the buildings and other structures located on Area 2 to deteriorate, resulting in release of hazardous substances into the environment. On information and belief, and, by way of example and not limitation, The King Service Inc. performed no maintenance on many of the buildings on Area 2, and their condition deteriorated to the point that asbestos insulation was exposed to the elements. On information and belief, as a result of the acts or omissions of The King Service Inc., friable asbestos is now present in the buildings on Area 2 in a "reportable quantity" within the meaning of 40 C.F.R. § 302.4, Table 302.4.

41. In March 1993, persons hired by The King Service Inc. started a fire on Area 2 that resulted in the release of hazardous substances, petroleum, and petroleum contaminated with hazardous substances on Area 2.

42. On information and belief, Conrail owns railroad tracks and land within Areas 2 and 4 on which hazardous substances have been detected and from which there are releases or threatened releases of hazardous substances.

COUNT I
(CERCLA SECTION 107(a))

43. Niagara Mohawk incorporates by reference the allegations in paragraphs 1-42 as if fully set forth herein.

44. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section:
>
> (1) the owner and operator of a vessel or a facility;
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for;

(A) all costs of removal or remedial action incurred by the United States Government or a state or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary cost of response incurred by any such person consistent with the national contingency plan.

45. Each defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

46. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

47. There has been a "release" or "threatened release" of "hazardous substances" at the Site within the meaning of Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

48. As a result of the release or threatened release of hazardous substances at the Site, and in response to the Order on Consent, Plaintiff has incurred and will continue to incur necessary costs of response consistent with the National Contingency Plan.

49. Defendants Conrail and The King Service Inc. are each liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as owners and/or operators of the Site.

50. Defendant The King Service Inc., as owner and/or operator of the Site from which there have been releases of petroleum contaminated with hazardous substances, is not entitled to assert that such materials are excluded from the definition of hazardous substances as set forth in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

51. Defendants The Foundation Company, Pittsburgh Business Properties, Inc. and United States Steel Company are each liable under Section 107(a)(2) of CERCLA, 42 U.S.C.

§ 9607(a)(2), as persons, or as successors in interest to, or otherwise responsible for the liabilities of, persons who at the time of disposal of hazardous substances at the Site owned or operated the Site.

52. Defendants The Foundation Company, The King Service, Inc., Pittsburgh Business Properties, Inc. and United States Steel Corporation are each liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), as persons, or as successors in interest to, or otherwise responsible for the liabilities of, persons who by contract, agreement, or otherwise arranged for disposal or treatment, of hazardous substances owned or possessed by such persons, or by any other party or entity, and that was disposed or treated at the Site.

53. Each defendant is strictly and jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs that Plaintiff has incurred and will incur in response to the release or threatened release of hazardous substances from the Site.

COUNT II
(CERCLA SECTION 113(f)(1))

54. Niagara Mohawk incorporates by reference the allegations in paragraphs 1-53 as if fully set forth herein.

55. Pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), "any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title."

56. Each defendant is a "person" within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1).

57. Each defendant is liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

58. Niagara Mohawk is entitled to contribution from each defendant under Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), for the costs that Niagara Mohawk has incurred and will incur in responding to the release or threatened release of hazardous substances from the Site.

COUNT III
NEW YORK NAVIGATION LAW, ARTICLE 12, SECTION 181(1)

59. Niagara Mohawk incorporates by reference the allegations in paragraphs 1-58 as if fully set forth herein.

60. Section 181(l) of the New York Navigation Law ("Act"), N.Y. Nav. Law § 181(1), provides that "[a]ny person who has discharged petroleum shall be strictly liable, without regard to fault, for all clean-up and removal costs and all direct and indirect damages, no matter by whom sustained . . . ."

61. Section 181(5) of the Act, N.Y. Nav. Law § 181(5), provides that "[a]ny claim by any injured person for the costs of clean-up and removal and direct and indirect damages based on the strict liability imposed by [Section 181 of the Act] may be brought directly against the person who has discharged the petroleum . . . ."

62. The release of petroleum, oil, and petroleum hydrocarbons into the soils, surface water, and groundwater at the Site constitutes a "discharge" of petroleum under Section 172(8) of the Act, N.Y. Nav. Law § 172(8).

63. Defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc., and United States Steel Company are each "persons," or are successors in interest to persons, or are otherwise responsible for the liabilities of persons, within the meaning of Section 172(14) of the Act, N.Y. Nav. Law § 172(14).

64. On information and belief, Defendants Conrail, The Foundation Company, The King Service Inc. , Pittsburgh Business Properties, Inc., and United States Steel Company have discharged petroleum at or on the Site, as those terms are defined in Sections 172(8) and 172(15) of the Act, N.Y. Nav. Law §§ 172(8) and 172(15).

65. Pursuant to Sections 181(1) and 181(5) of the Act, N.Y. Nav. Law §§ 181(1) and 181(5), Defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc., and United States Steel Company are each strictly liable to Niagara Mohawk for all cleanup and removal costs and all direct and indirect damages resulting from discharges of petroleum at or from the Site.

COUNT IV
NEW YORK NAVIGATION LAW, ARTICLE 12, SECTION 176(8)

66. Niagara Mohawk incorporates by reference the allegations set forth in paragraphs 1-65 as though fully set forth herein.

67. Section 176(8) of the New York Navigation Law ("Act"), N.Y. Nav. Law § 176(8), provides that "every person providing cleanup, removal of discharge of petroleum . . . pursuant to this section [of the Act] shall be entitled to contribution from any other responsible party."

68. Niagara Mohawk is a "person" engaged in "cleanup and removal" of a discharge of petroleum at the Site, within the meaning of Sections 172(4) and 172(14), and 176(8) of the Act, N.Y. Nav. Law §§ 172(4), 172(14), and 176(8).

69. On information and belief, Defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc. and United States Steel Company have discharged petroleum at or on the Site, and are therefore responsible parties.

70. Niagara Mohawk is therefore entitled to contribution from Defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc. and United States Steel Company under Section 176(8) of the Act, N.Y. Nav. Law § 176(8), for the costs that it has incurred and will incur in the cleanup and removal of any petroleum discharges at or from the Site.

COUNT V
NY CPLR 1401 (JOINT TORTFEASORS LAW)

71. Niagara Mohawk incorporates by reference the allegations set forth in paragraphs 1-70 as though fully set forth herein.

72. Section 1401 of New York Civil Practice Law and Rules, N.Y.C.P.L.R. § 1401, provides, in relevant part, that "two or more persons who are subject to liability for damages for the same . . . injury to property . . . may claim contribution among them whether or not an action has been brought or a judgment has been rendered against the person from whom contribution is sought."

73. Each of the defendants is liable to Niagara Mohawk under the New York Joint Tortfeasors Law, Section 1401 of the New York Civil Practice Law and Rules, N.Y.C.P.L.R.

§1401, for contribution with respect to any response costs or cleanup costs that Niagara Mohawk incurred or will incur in connection with the Site.

COUNT VI
COMMON LAW INDEMNIFICATION

74. Niagara Mohawk incorporates by reference the allegations set forth in paragraphs 1-73 as though fully set forth herein.

75. Niagara Mohawk, through no fault of its own, may be lawfully compelled to incur costs and damages in remediating defendants' hazardous substances and other wastes at the Site.

76. Each defendant is required to indemnify Niagara Mohawk for any costs or damages that Niagara Mohawk may incur in connection with the Site as a result of each defendant's actions or failures to act.

COUNT VII
UNJUST ENRICHMENT, RESTITUTION

77. Niagara Mohawk incorporates by reference the allegations set forth in paragraphs 1-76 as though fully set forth herein.

78. Defendant The King Service Inc. had and continues to have duties and obligations to remediate and abate the hazardous substances and other wastes at the Site.

79. The King Service Inc. has failed and continues to fail to perform its duties or to satisfy its obligations, which have been and may continue to be performed and satisfied by Niagara Mohawk.

80. The King Service Inc. has and continues to be unjustly enriched by Niagara Mohawk's performance of The King Service Inc.'s duties in satisfaction of its obligations and by

Niagara Mohawk incurring past and/or future costs or damages owed and owing by The King Service Inc. Niagara Mohawk therefore is entitled to compensation from The King Service Inc.

COUNT VIII
PUBLIC NUISANCE

81. Niagara Mohawk incorporates by reference the allegation set forth in paragraphs 1-80 as though fully set forth herein.

82. The Site presents a substantial offense or interference to the public, so as to constitute a public nuisance. The activities of defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc., and United States Steel Company in disposing, or arranging for the treatment, storage and/or disposal of hazardous substances, petroleum or other wastes at the Site created or contributed to a public nuisance which each of these defendants has failed to abate.

83. The conduct described above constitutes past and continuing violations of the common law of public nuisance.

84. The continuing presence at the Site of hazardous substances, petroleum and other wastes generated by defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc. and United States Steel Company interferes with the exercise of rights common to all, and directly, particularly, and proximately injures the rights and property of Niagara Mohawk in that Niagara Mohawk has been compelled to incur in the past and may be compelled to incur in the future response costs, cleanup costs and damages abating the conditions at the Site created by defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc. and the United States Steel Company. Niagara

Mohawk is therefore entitled to compensation from defendants The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc., and United States Steel Company.

COUNT IX
DECLARATORY JUDGMENT

85. Niagara Mohawk incorporates by reference the allegations set forth in paragraphs 1-84 as though fully set forth herein.

86. An actual controversy currently exists between Niagara Mohawk and each defendant concerning the respective obligations and potential legal liabilities for response costs which have been incurred and will be incurred in the future by Niagara Mohawk in connection with the investigation and clean-up of contamination at the Site.

87. Each defendant is liable to Niagara Mohawk under CERCLA, New York State law or common law, as specified in Counts I through VIII.

88. Absent a judicial declaration setting forth the parties' rights and obligations with respect to these costs, a multiplicity of actions may result. Pursuant to 28 U.S.C. §2201, Section 113(g)(2) of CERCLA, 42 U.S.C. § 9601(g)(2), and Section 3001 of the New York Civil Practice Law and Rules, N.Y.C.P.L.R. § 3001, Niagara Mohawk seeks entry of a judgment declaring that each defendant is liable as alleged in this Complaint, and setting forth each defendant's share of liability to Niagara Mohawk for all future costs that may be incurred by Niagara Mohawk in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, Niagara Mohawk demands judgment in its favor and against each defendant, as follows:

1. As to Count I, a judgment under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding each defendant jointly and severally liable for the costs Niagara Mohawk has incurred and will incur in response to the release or threatened release of hazardous substances from the Site; or, in the alternative,

2. As to Count II, a judgment under Section 113(f)(1) of CERCLA , 42 U.S.C. § 9613 (f)(1), holding each defendant liable in contribution for the costs Niagara Mohawk has incurred and will incur in response to the release or threatened release of hazardous substances from the Site, and ordering that each defendant pay Niagara Mohawk their adjudicated share of the costs that Niagara Mohawk has incurred and will incur in response to the release or threatened release of hazardous substances from the Site; and

3. As to Count III, a judgment, pursuant to Sections 181(1) and 181(5) of the New York Navigation Law, N.Y. Nav. Law §§ 181(1), 181(5), holding Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties and the United States Steel Company jointly and severally liable for all clean-up and removal costs and all direct and indirect damages incurred by Niagara Mohawk in responding to the discharge of petroleum at or on the Site; and

4. As to Count IV, a judgment, pursuant to Section 176(8) of the New York Navigation Law, N.Y. Nav. Law § 176(8), holding Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties and the United States Steel Company liable in contribution to Niagara Mohawk for costs incurred in responding to the discharge of petroleum at or on the Site, and ordering that each defendant pay Niagara Mohawk their adjudicated share of

the costs incurred by Niagara Mohawk in responding to the discharge of petroleum at or on the Site; and

5. As to Count V, a judgment, pursuant to Section 1401 of New York Civil Practice Law and Rules, N.Y.C.P.L.R. § 1401, holding each defendant liable in contribution to Niagara Mohawk for all past and future response and clean-up costs incurred by Niagara Mohawk and ordering that each defendant pay Niagara Mohawk the amounts determined by the Court to be owed to Niagara Mohawk for those response and clean-up costs; and

6. As to Count VI, a judgment holding each defendant liable to indemnify Niagara Mohawk for any costs or damages that Niagara Mohawk may incur in connection with the Site as a result of each defendant's actions or failures to act; and

7. As to Count VII, a judgment holding The King Service Inc. liable to Niagara Mohawk in an amount sufficient to compensate Niagara Mohawk for costs or damages it incurs in satisfying The King Service Inc.'s obligations, and thereby unjustly enriching The King Service Inc.; and

8. As to Count VIII, a judgment that defendants Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc. and the United States Steel Company are liable to Niagara Mohawk for costs or damages that Niagara Mohawk has incurred or will incur to abate conditions at the Site created by Conrail, The Foundation Company, The King Service Inc., Pittsburgh Business Properties, Inc., and United States Steel Company; and

9. As to Count IX, a declaratory judgment adjudicating each defendant's liability for all future costs that may be incurred by Niagara Mohawk in connection with the Site; and

10. For the costs of this lawsuit, including reasonable attorneys' fees and prejudgment interest as allowed by applicable federal, New York State law and common law; and

11. For such other and further relief that this Court deems just and proper.

Respectfully submitted,

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Dated July 1, 1998